



General Assembly

February Session, 2014

Amendment

LCO No. 5661

HB0505305661SR0

Offered by:
SEN. KELLY, 21st Dist.

To: Subst. House Bill No. 5053

File No. 643

Cal. No. 427

"AN ACT STRENGTHENING CONNECTICUT'S INSURANCE INDUSTRY COMPETITIVENESS."

1 After the last section, add the following and renumber sections and
2 internal references accordingly:

3 "Sec. 501. Section 38a-905 of the general statutes is repealed and the
4 following is substituted in lieu thereof (*Effective October 1, 2014*):

5 For the purposes of sections 38a-903 to 38a-961, inclusive, and
6 section 505 of this act:

7 (1) "Ancillary state" means any state other than a domiciliary state.

8 (2) "Commissioner" means the Insurance Commissioner.

9 (3) "Commodity contract" means: (A) A contract for the purchase or
10 sale of a commodity for future delivery on, or subject to the rules of, a
11 board of trade designated as a contract market by the Commodity
12 Futures Trading Commission under the Commodity Exchange Act (7
13 USC 1 et seq.) or board of trade outside the United States; (B) an
14 agreement that is subject to regulation under Section 19 of the
15 Commodity Exchange Act (7 USC 1, et seq.) and that is commonly

16 known to the commodities trade as a margin account, margin contract,
17 leverage account or leverage contract; or (C) an agreement or
18 transaction that is subject to regulation under section 4c(b) of the
19 Commodity Exchange Act (7 USC 1 et seq.) and that is commonly
20 known to the commodities trade as a commodity option.

21 (4) "Creditor" is a person having any claim, whether matured or
22 unmatured, liquidated or unliquidated, secured or unsecured,
23 absolute, fixed or contingent.

24 (5) "Delinquency proceeding" means any proceeding instituted
25 against an insurer for the purpose of liquidating, rehabilitating,
26 reorganizing or conserving such insurer, and any summary
27 proceeding under section 38a-912. "Formal delinquency proceeding"
28 means any liquidation or rehabilitation proceeding.

29 (6) "Doing business", "doing insurance business" and the "business
30 of insurance", includes any of the following acts, whether effected by
31 mail or otherwise: (A) The issuance or delivery of contracts of
32 insurance, either to persons resident in or covering a risk located in
33 this state; (B) the solicitation of applications for such contracts or other
34 negotiations preliminary to the execution of such contracts; (C) the
35 collection of premiums, membership fees, assessments or other
36 consideration for such contracts; (D) the transaction of matters
37 subsequent to execution of such contracts and arising out of them; or
38 (E) operating under a license or certificate of authority, as an insurer,
39 issued by the Insurance Department.

40 (7) "Domiciliary state" means the state in which an insurer is
41 incorporated or organized, or, in the case of an alien insurer, its state of
42 entry.

43 (8) "Fair consideration" is given for property or obligation: (A) When
44 in exchange for such property or obligation, as a fair equivalent
45 therefor, and in good faith, property is conveyed or services are
46 rendered or an obligation is incurred or an antecedent debt is satisfied;

47 or (B) when such property or obligation is received in good faith to
48 secure a present advance or antecedent debt in an amount not
49 disproportionately small as compared to the value of the property or
50 obligation obtained.

51 (9) "Federal Home Loan Bank" has the same meaning as provided in
52 12 USC 1422, as amended from time to time.

53 [(9)] (10) "Foreign country" has the same meaning [assigned to it] as
54 provided in section 38a-1.

55 [(10)] (11) "Forward contract" means a contract, other than a
56 commodity contract, for the purchase, sale or transfer of a commodity,
57 as defined in Section 1 of the Commodity Exchange Act (7 USC 1 et
58 seq.), or any similar good, article, service, right or interest that is
59 presently or in the future becomes the subject of dealing in the forward
60 contract trade, or product or by-product thereof, with a maturity date
61 more than two days after the date the contract is entered into,
62 including, but not limited to, a repurchase transaction, reverse
63 repurchase transaction, unallocated hedge transaction, deposit, loan,
64 option, allocated transaction or a combination of these or option on
65 any of them.

66 [(11)] (12) "General assets" includes all property, real, personal or
67 otherwise, not specifically mortgaged, pledged, deposited or otherwise
68 encumbered for the security or benefit of specified persons or classes
69 of persons. As to specifically encumbered property, "general assets"
70 includes all such property or its proceeds in excess of the amount
71 necessary to discharge the sum or sums secured thereby. Assets held
72 in trust and on deposit for the security or benefit of all policyholders or
73 all policyholders and creditors, in more than a single state, shall be
74 treated as general assets.

75 [(12)] (13) "Guaranty association" means the Connecticut Insurance
76 Guaranty Association established pursuant to sections 38a-836 to 38a-
77 853, inclusive, the Connecticut Life and Health Insurance Guaranty

78 Association established pursuant to sections 38a-858 to 38a-875,
79 inclusive, and any other similar entity created by the General
80 Assembly for the payment of claims of insolvent insurers. "Foreign
81 guaranty association" means any similar entities created by the
82 legislature of any other state.

83 [(13)] (14) "Insolvency" and "insolvent" have the same meanings
84 [assigned to them] as provided in section 38a-1.

85 [(14)] (15) "Insurer" means any person who has done, purports to
86 do, is doing or is licensed to do an insurance business, and is or has
87 been subject to the authority of, or to liquidation, rehabilitation,
88 reorganization, supervision or conservation by, any insurance
89 commissioner. For purposes of sections 38a-903 to 38a-961, inclusive,
90 any other persons included under section 38a-904 shall be deemed to
91 be insurers.

92 (16) "Insurer-member" means any insurer that is a member of a
93 Federal Home Loan Bank.

94 [(15)] (17) "Netting agreement" means a contract or agreement,
95 including terms and conditions incorporated by reference therein,
96 including a master agreement, which master agreement, together with
97 all schedules, confirmations, definitions and addenda thereto and
98 transactions under any thereof, shall be treated as one netting
99 agreement, that (A) documents one or more transactions between the
100 parties to the agreement for or involving one or more qualified
101 financial contracts and (B) provides for the netting or liquidation of
102 qualified financial contracts or present or future payment obligations
103 or payment entitlements thereunder, including liquidation or closeout
104 values relating to such obligations or entitlements, among the parties
105 to the netting agreement.

106 [(16)] (18) "Preferred claim" means any claim with respect to which
107 the terms of sections 38a-903 to 38a-961, inclusive, accord priority of
108 payment from the general assets of the insurer.

109 [(17)] (19) "Qualified financial contract" means a commodity
110 contract, forward contract, repurchase agreement, securities contract,
111 swap agreement and any similar agreement that the commissioner
112 determines to be a qualified financial contract for the purposes of this
113 chapter.

114 [(18)] (20) "Receiver" means receiver, liquidator, rehabilitator or
115 conservator as the context requires.

116 [(19)] (21) "Reciprocal state" means any state other than this state in
117 which in substance and effect sections 38a-920, 38a-954, 38a-955 and
118 38a-957 to 38a-959, inclusive, are in force and in which provisions are
119 in force, requiring that the commissioner or equivalent official be the
120 receiver of a delinquent insurer and in which some provision exists for
121 the avoidance of fraudulent conveyances and preferential transfers.

122 [(20)] (22) "Repurchase agreement" and "reverse repurchase
123 agreement" mean an agreement, including related terms, that provides
124 for the transfer of certificates of deposit, eligible bankers' acceptances,
125 or securities that are direct obligations of, or that are fully guaranteed
126 as to principal and interest by, the United States or an agency of the
127 United States against the transfer of funds by the transferee of the
128 certificates of deposit, eligible bankers' acceptances or securities with a
129 simultaneous agreement by the transferee to transfer to the transferor
130 certificates of deposit, eligible bankers' acceptances or securities as
131 described in this subdivision, at a date certain not later than one year
132 after the transfers or on demand, against the transfer of funds. For the
133 purposes of this subdivision, the items that may be subject to an
134 agreement include mortgage-related securities, a mortgage loan, and
135 an interest in a mortgage loan, and shall not include any participation
136 in a commercial mortgage loan, unless the commissioner determines to
137 include the participation within the meaning of the term.

138 [(21)] (23) "Secured claim" means any claim secured by an asset that
139 is not a general asset. "Secured claim" also includes claims which have
140 become liens upon specific assets by reason of judicial process prior to

141 four months before the commencement of delinquency proceedings.
142 "Secured claim" does not include a special deposit claim or a claim
143 arising from a constructive or resulting trust.

144 [(22)] (24) "Securities contract" means a contract for the purchase,
145 sale or loan of a security, including an option for the repurchase or sale
146 of a security, certificate of deposit, or group or index of securities,
147 including an interest therein or based on the value thereof, or an
148 option entered into on a national securities exchange relating to
149 foreign currencies, or the guarantee of a settlement of cash or securities
150 by or to a securities clearing agency. For the purposes of this
151 subdivision, "security" includes a mortgage loan, mortgage-related
152 securities, and an interest in any mortgage loan or mortgage-related
153 security.

154 [(23)] (25) "Special deposit claim" means any claim secured by a
155 deposit made pursuant to a state statute for the security or benefit of a
156 limited class or classes of persons, but does not include any claim
157 secured by general assets.

158 [(24)] (26) "State" means any state, district or territory of the United
159 States.

160 [(25)] (27) "Swap agreement" means an agreement, including the
161 terms and conditions incorporated by reference in an agreement, that
162 is a rate swap agreement, basis swap, commodity swap, forward rate
163 agreement, interest rate future, interest rate option, forward foreign
164 exchange agreement, spot foreign exchange agreement, rate cap
165 agreement, rate floor agreement, rate collar agreement, currency swap
166 agreement, cross-currency rate swap agreement, currency future, or
167 currency option or any other similar agreement, and includes any
168 combination of agreements and an option to enter into an agreement.

169 [(26)] (28) "Transfer" includes the sale and every other and different
170 mode, direct or indirect, of disposing of or of parting with property or
171 with an interest therein, or with the possession thereof or of fixing a

172 lien upon property or upon an interest therein, absolutely or
173 conditionally, voluntarily, by or without judicial proceedings. The
174 retention of a security title to property delivered to a debtor shall be
175 deemed a transfer suffered by the debtor.

176 Sec. 502. Section 38a-907 of the general statutes is repealed and the
177 following is substituted in lieu thereof (*Effective October 1, 2014*):

178 (a) The conservation, rehabilitation and liquidation of insurance
179 companies and other persons subject to the provisions of sections 38a-
180 903 to 38a-961, inclusive, are a matter of vital public interest and affect
181 the relationships between insureds and their insurers.

182 (1) An application or petition under sections 38a-912, 38a-914, 38a-
183 915, 38a-918, 38a-919 and 38a-920, shall operate as an automatic stay
184 applicable to all persons, other than the receiver, which shall be
185 permanent and survive the entry of an order of conservation,
186 rehabilitation or liquidation, and which shall prohibit: (A) The
187 transaction of further business; (B) the transfer of property; (C)
188 interference with the receiver or with a proceeding under said sections;
189 (D) waste of the insurer's assets; (E) dissipation and transfer of bank
190 accounts; (F) the institution or further prosecution of any actions or
191 proceedings in which the insurer is a party; (G) the obtaining of
192 preferences, judgments, attachments, garnishments, or liens against
193 the insurer, its assets or its policyholders; (H) the levying of execution
194 against the insurer, its assets, or its policyholders; (I) the making of any
195 sale or deed for nonpayment of taxes or assessments that would lessen
196 the value of the assets of the insurer; (J) the withholding from the
197 receiver of books, accounts, documents, or other records relating to the
198 business of the insurer; or (K) any other threatened or contemplated
199 action that might lessen the value of the insurer's assets or prejudice
200 the rights of policyholders, creditors, or shareholders, or the
201 administration of any proceeding under said sections.

202 (2) Notwithstanding any other provision of law, no bond shall be
203 required of the commissioner as a prerequisite for the issuance of any

204 injunction or restraining order pursuant to this section.

205 (3) Upon motion of a person subject to the stay, the court, after
206 notice to the receiver and a hearing, may modify or grant relief from
207 the stay, provided said person shall have the burden of proof and shall
208 establish by clear and convincing evidence that such relief should be
209 granted.

210 (4) All matters that may be stayed, enjoined or barred under this
211 section and all matters involving its interpretation or operation shall
212 remain within the exclusive jurisdiction of the domiciliary receivership
213 court.

214 (b) The receiver may apply to any court outside of the state for the
215 relief described in subsection (a) of this section.

216 (c) (1) Notwithstanding subsections (a) and (b) of this section or any
217 other provision of this chapter, on and after the eighth day following
218 the filing of a delinquency proceeding against an insurer-member, no
219 person shall be stayed, enjoined or barred from exercising or enforcing
220 any right or cause of action under any pledge, security, credit, loan,
221 advance, reimbursement or guarantee agreement or arrangement or
222 any similar agreement or arrangement or other credit enhancement to
223 which a Federal Home Loan Bank is a party.

224 (2) If, prior to such eighth day, a Federal Home Loan Bank
225 reasonably concludes in good faith that the value of its collateral is
226 decreasing at such a rate that to delay the foreclosure upon, selling or
227 leasing of or disposal of such collateral or other exercise of the Federal
228 Home Loan Bank's rights as a secured party until such eighth day
229 could result in such collateral being insufficient to satisfy in full the
230 Federal Home Loan Bank's claim against such insurer-member, the
231 Federal Home Loan Bank shall notify the commissioner of such
232 conclusion. At any time after such notification, the Federal Home Loan
233 Bank or a person acting on its behalf may, with the concurrence of the
234 commissioner and to the extent permitted by the terms of the pledge,

235 security, credit, loan, advance, reimbursement or guarantee agreement
236 or arrangement or any similar agreement or arrangement or other
237 credit enhancement under subdivision (1) of this subsection or by
238 applicable laws or regulations, foreclose upon, sell, lease or otherwise
239 dispose of such collateral or any portion thereof or may otherwise
240 exercise its rights as a secured party, provided the Federal Home Loan
241 Bank acts in good faith, in a commercially reasonable manner and in
242 accordance with applicable laws and regulations.

243 Sec. 503. Section 38a-928 of the general statutes is repealed and the
244 following is substituted in lieu thereof (*Effective October 1, 2014*):

245 (a) Every transfer made or suffered and every obligation incurred
246 by an insurer within one year prior to the filing of a successful petition
247 for rehabilitation or liquidation under sections 38a-903 to 38a-961,
248 inclusive, is fraudulent as to then existing and future creditors if made
249 or incurred without fair consideration, or with actual intent to hinder,
250 delay, or defraud either existing or future creditors. A transfer made or
251 an obligation incurred by an insurer ordered to be rehabilitated or
252 liquidated under said sections, which is fraudulent under this section,
253 may be avoided by the receiver, except as to a person who in good
254 faith is a purchaser, lienor, or obligee for a present fair equivalent
255 value, and except that any purchaser, lienor, or obligee, who in good
256 faith has given a consideration less than fair for such transfer, lien, or
257 obligation, may retain the property, lien or obligation as security for
258 repayment. The court may, on due notice, order any such transfer or
259 obligation to be preserved for the benefit of the estate, and in that
260 event, the receiver shall succeed to and may enforce the rights of the
261 purchaser, lienor [,] or obligee.

262 (b) (1) A transfer of property other than real property shall be
263 deemed to be made or suffered when it becomes so far perfected that
264 no subsequent lien obtainable by legal or equitable proceedings on a
265 simple contract could become superior to the rights of the transferee
266 under subsection (c) of section 38a-930.

267 (2) A transfer of real property shall be deemed to be made or
268 suffered when it becomes so far perfected that no subsequent bona fide
269 purchaser from the insurer could obtain rights superior to the rights of
270 the transferee.

271 (3) A transfer which creates an equitable lien shall not be deemed to
272 be perfected if there are available means by which a legal lien could be
273 created.

274 (4) Any transfer not perfected prior to the filing of a petition for
275 liquidation shall be deemed to be made immediately before the filing
276 of the successful petition.

277 (5) The provisions of this subsection apply whether or not there are
278 or were creditors who might have obtained any liens or persons who
279 might have become bona fide purchasers.

280 (c) Any transaction of the insurer with a reinsurer shall be deemed
281 fraudulent and may be avoided by the receiver under subsection (a) of
282 this section if: (1) The transaction consists of the termination,
283 adjustment, or settlement of a reinsurance contract in which the
284 reinsurer is released from any part of its duty to pay the originally
285 specified share of losses that had occurred prior to the time of the
286 transaction, unless the reinsurer gives a present fair equivalent value
287 for the release; and (2) any part of the transaction took place within
288 one year prior to the date of filing of the petition through which the
289 receivership was commenced.

290 (d) Any person receiving property from the insurer or any benefit
291 thereof which is a fraudulent transfer under subsection (a) of this
292 section shall be personally liable therefor and shall be bound to
293 account to the liquidator.

294 (e) Notwithstanding subsections (a) to (d), inclusive, of this section
295 or any other provision of this chapter, no receiver or any other person
296 shall avoid any transfer or obligation that arises under or in connection
297 with any pledge, security, credit, loan, advance, reimbursement or

298 guarantee agreement or arrangement or any similar agreement or
299 arrangement or other credit enhancement to which a Federal Home
300 Loan Bank is a party, that is made, suffered or incurred prior to or after
301 the filing of a successful petition for rehabilitation or liquidation under
302 sections 38a-903 to 38a-961, inclusive. Such transfer or obligation may
303 be avoided by the receiver or other person if such transfer or obligation
304 was made, suffered or incurred with actual intent to hinder, delay or
305 defraud the insurer, the receiver or existing or future creditors.

306 Sec. 504. Subsection (a) of section 38a-930 of the general statutes is
307 repealed and the following is substituted in lieu thereof (*Effective*
308 *October 1, 2014*):

309 (a) (1) A preference is a transfer of any of the property of an insurer
310 to or for the benefit of a creditor, for or on account of an antecedent
311 debt, made or suffered by the insurer within one year before the filing
312 of a successful petition for liquidation under sections 38a-903 to 38a-
313 961, inclusive, the effect of which transfer may be to enable the creditor
314 to obtain a greater percentage of this debt than another creditor of the
315 same class would receive. If a liquidation order is entered while the
316 insurer is already subject to a rehabilitation order, then such transfers
317 shall be deemed preferences if made or suffered within one year before
318 the filing of the successful petition for rehabilitation, or within two
319 years before the filing of the successful petition for liquidation,
320 whichever time is shorter.

321 (2) Any preference may be avoided by the liquidator if: (A) The
322 insurer was insolvent at the time of the transfer; (B) the transfer was
323 made within four months before the filing of the petition; (C) the
324 creditor receiving it or to be benefited thereby or his agent acting with
325 reference thereto had, at the time when the transfer was made,
326 reasonable cause to believe that the insurer was insolvent or was about
327 to become insolvent; or (D) the creditor receiving it was an officer, or
328 any employee or attorney or other person who was in fact in a position
329 of comparable influence in the insurer to an officer whether or not he
330 held such position, or any shareholder holding directly or indirectly

331 more than five per centum of any class of any equity security issued by
332 the insurer, or any other person, firm, corporation, association, or
333 aggregation of persons with whom the insurer did not deal at arm's
334 length.

335 (3) Notwithstanding subdivision (2) of this subsection or any other
336 provision of this chapter, no preference that arises under or in
337 connection with any pledge, security, credit, loan, advance,
338 reimbursement or guarantee agreement or arrangement or any similar
339 agreement or arrangement or other credit enhancement to which a
340 Federal Home Loan Bank is a party shall be avoided by the liquidator
341 or any other person.

342 [(3)] (4) Where the preference is voidable, the liquidator may
343 recover the property, or if it has been converted, its value from any
344 person who has received or converted the property, except where a
345 bona fide purchaser or lienor has given less than fair equivalent value,
346 he shall have a lien upon the property to the extent of the
347 consideration actually given by him. Where a preference by way of lien
348 or security title is voidable, the court may on due notice order the lien
349 or title to be preserved for the benefit of the estate, in which event the
350 lien or title shall pass to the liquidator.

351 Sec. 505. (NEW) (*Effective October 1, 2014*) With respect to an insurer-
352 member that is subject to any delinquency proceeding:

353 (1) If a Federal Home Loan Bank exercises its rights regarding
354 collateral pledged by such insurer-member, the Federal Home Loan
355 Bank shall repurchase, to the extent such Federal Home Loan Bank
356 determines in good faith that such repurchase is permissible under
357 applicable laws and regulations and such Federal Home Loan Bank's
358 capital plan and is consistent with such Federal Home Loan Bank's
359 current capital stock practices applicable to its entire membership, any
360 outstanding capital stock that is in excess of the amount of stock of
361 said bank that such insurer-member is required to hold as a minimum
362 investment.

363 (2) After the appointment of a receiver for such insurer-member, the
 364 Federal Home Loan Bank shall provide, not later than ten business
 365 days after a request from such receiver, a process and establish a
 366 timeline for all of the following:

367 (A) The release of such insurer-member's collateral that exceeds the
 368 amount required to support remaining secured obligations of such
 369 insurer-member after any repayment of loans as determined in
 370 accordance with applicable agreements between the Federal Home
 371 Loan Bank and such insurer-member;

372 (B) The release of such insurer-member's collateral that remains
 373 after repayment in full of all outstanding secured obligations of such
 374 insurer-member;

375 (C) The payment of any fees owed by such insurer-member and the
 376 operation of deposits and other accounts such insurer-member may
 377 have with the Federal Home Loan Bank; and

378 (D) The possible redemption or repurchase of the stock of the
 379 Federal Home Loan Bank or excess stock of any class that such insurer-
 380 member is required to hold as a member of such Federal Home Loan
 381 Bank.

382 (3) Upon request from a receiver of such insurer-member, the
 383 Federal Home Loan Bank shall provide any available options for such
 384 insurer-member to renew or restructure a loan to defer associated
 385 prepayment fees. Any such options shall be subject to market
 386 conditions, the terms of such insurer-member's outstanding loans, the
 387 applicable policies of the Federal Home Loan Bank and the Federal
 388 Home Loan Bank's compliance with federal laws and regulations."

This act shall take effect as follows and shall amend the following sections:		
Sec. 501	October 1, 2014	38a-905
Sec. 502	October 1, 2014	38a-907

Sec. 503	<i>October 1, 2014</i>	38a-928
Sec. 504	<i>October 1, 2014</i>	38a-930(a)
Sec. 505	<i>October 1, 2014</i>	New section